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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,838	01/04/2001	Kazunori Kondo	53859USA2A.0	2568

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EXAMINER

CHANNAVAJALA, LAKSHMI SARADA

ART UNIT	PAPER NUMBER
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1615

DATE MAILED: 01/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/582,838

Applicant(s)

KONDO ET AL.

Examiner

Lakshmi S Channavajjala

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 9-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Receipt of amendment and response dated 8-30-04 is acknowledged.

Claims 1-8 have been canceled. Claims 9-16 are pending.

The following rejection of record has been maintained:

Response to Arguments

Double Patenting

1. Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-30 of U.S. Patent No. 6,533,119.

2. Claims 1-16 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-34 of U.S. Patent No. 6,645,611.

RESPONSE: Applicants argue that the rejection based on U.S. Patent No. 6,533,119 filed on May 08, 2000 is inappropriate because the present application relates back to a PCT filing, 17598/25736 having a filing date of December 4, 1998 claiming further priority to Japanese Patent Applications filed on December 5, 1997. However, applicants' arguments are not persuasive because nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees and is independent of the filing date of the patent over which the rejection is made. Applicants have not presented any arguments regarding the double patenting rejection over U.S. Patent No. 6,645,611 and hence the rejection has been maintained.

The following is a new rejection:

Claim Rejections - 35 USC § 112

Claim 16 recites the limitation "aqueous liquid absorbing substance" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

Claims 9-11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over KOKAI PATENT HEI 10-15304 (HEI) (submitted on PTO-1449).

HEI teaches a fat or oily substance absorber comprising a polyolefin in the form of a film, strip or sheet. The sheet of HEI is porous having a pore diameter of 0.001 to 1micron (0001 & 0010). HEI further teaches the film thickness to be 5 to 50 microns (0021). HEI does not specifically teach the claimed interstitial volume and the void content. However, the pore diameter disclosed by HEI is in the same range as that claimed and accordingly, the polyolefin oily absorber of HEI exhibit the claimed void content and hence the interstitial volumes and the liquid absorption capacity of the sheet or film of HEI. HEI teaches the fat and oily absorbing polyolefin for absorbing oil and fat on a solid surface or in oil contaminated waste water (0002). HEI does not explicitly state "a method of removing facial oil" with the oil-absorbing polymer, as claimed. However, HEI states that the polymer is suitably used for a cosmetic face paper, oil-wiping material etc (0038). Accordingly, it would have been obvious for one of an ordinary skill in the art at the time of the instant invention to use the oil absorbing material of HEI for removing facial oil because HEI teaches that the material selectively absorbs oil in a short period of time.

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Claims 12-14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over KOKAI PATENT HEI 10-15304 (HEI) as applied to claims 9-11 and 15 above, and further in view of GB 2061709 (submitted on PTO-1449).

Instant claims recite a liquid absorbing substance partially distributed on the surface of the porous stretched film. HEI does teach distribution of a liquid absorbing substance on the oil and fat absorbing stretched, porous thermoplastic material.

GB teaches a cosmetic pad for cleaning the skin or removing make-up, comprising a core of flexible, liquid -sorbent material and a covering of a stretched material on the liquid-sorbent material (abstract, page 1, lines 30-40). GB teaches a method of cleaning skin or face or make-up, comprising applying water to the pad to cause the liquid-sorbent material to absorb water and wiping the said pad over a portion of the surface to be removed or cleaned. GB teaches that the sorbent material is covered with a stretched plastic material, where as instant claim recites that is distributed on the surface of the pad. GB also fails to teach the limitations of instant claims 13 and 15 i.e., in corporation of the sorbent material into the stretched film. However, GB teaches the liquid-sorbent material i.e., for cleaning or removing make-up and thus has the same function as that of the instant. Accordingly, it would have been within the scope of a skilled artisan at the time of the instant invention to choose to incorporate the sorbent material into the stretched material or under the covering stretched sheet, and still be able to efficiently clean the surface or remove the make-up from the skin surface.

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Applicant cannot rely upon the foreign priority papers to overcome this rejection because a translation of said papers has not been made of record in accordance with 37 CFR 1.55. See MPEP § 201.15.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM Monday-Friday, except alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
January 4, 2005